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May 8, 2017

***EX PARTE* VIA ECFS**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269; *Accelerating Broadband Deployment*, GN Docket No. 17-83

Dear Ms. Dortch:

Southern Communications Services, Inc. d/b/a Southern Linc (Southern Linc) submits the following additional information in support of its position that the Middle Class Tax Relief and Job Creation Act of 2012 (the Spectrum Act) allows states to propose plans to opt-out of FirstNet's nationwide public safety broadband network (NPSBN) that include both a radio access network (RAN) and an evolved packet core (EPC or core). As that Act recognizes, consumers stand to benefit from the savings of states "utiliz[ing], to the maximum extent economically desirable, existing commercial or other communications infrastructure"[1]—including existing core elements operated by states or their network partners.

Additionally, the Commission cannot create atextual and extra-statutory procedural hurdles to that application process because the Spectrum Act created only a limited role for the FCC in reviewing state opt-out plans. The Commission's review under the Act is two-fold: it must determine whether a state's proposed plan (1) complies with the FCC Technical Advisory Board's minimum technical interoperability requirements, and (2) is interoperable with the NPSBN.[2] So long as these interoperability requirements are satisfied, the Commission lacks the authority to demand additional showings. Accordingly, the Commission cannot mandate that opting-out states award contracts based on their requests for proposals (RFPs) within 180 days of a state providing notice of its intention to opt-out. Nor can the Commission redefine the manner in which a Governor chooses to submit his or her opt-out notification.

Finally, the Spectrum Act requires the FCC to provide a state with an opportunity to cure defects in its original opt-out proposal and to provide a written explanation of the agency's final decision on an opt-out plan sufficient to enable judicial review.

[1] Spectrum Act § 6206(c)(3), 47 U.S.C. § 1426(c)(3) (2015).

[2] *Id.* § 6302(e)(3)(C)(i), 47 U.S.C. § 1442(e)(3)(C)(i).

State Opt-Out Plans May Include Evolved Packet Core Elements

The Spectrum Act's text contemplates state opt-out plans that include core elements operated by the states or their network partners. The following three provisions, which are not intended as an exhaustive list, confirm the Act's plain meaning.

i. Section 6202(b)

The Spectrum Act defines the terms "core network"[3] and "radio access network"[4] only in reference to section 6202(b), which defines the components of the Act's "Public Safety Broadband Network." Section 6202(b), in turn, provides:

> NETWORK COMPONENTS.—The nationwide public safety broadband network shall be based on a single, national network architecture that evolves with technological advancements and initially consists of—
>
> (1) a core network that—
>
> (A) consists of national and regional data centers, and other elements and functions that may be distributed geographically, all of which shall be based on commercial standards; and
>
> (B) provides the connectivity between—
>
> (i) the radio access network; and
>
> (ii) the public Internet or the public switched network, or both; and
>
> (2) a radio access network that—
>
> (A) consists of all cell site equipment, antennas, and backhaul equipment, based on commercial standards, that are required to enable wireless communications with devices using the public safety broadband spectrum; and
>
> (B) shall be developed, constructed, managed, maintained, and operated taking into account the plans developed in the State, local, and tribal planning and implementation grant program under section 6302(a).[5]

The Spectrum Act thus envisions "a single, national network architecture" comprising (1) "a core network" and (2) "a radio access network." And the "core network" in subsection (b)(1) and "radio access network" in subsection (b)(2) each contemplate at least the potential for multipart networks of constituent elements drawn from *both* the NPSBN *and* from state opt-outs.

As an initial matter, the umbrella language of section 6202(b) expressly acknowledges that the original iteration of the yet-to-be-fully-developed "single, national network architecture"[6] is just

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[3] *Id.* § 6001(12), 47 U.S.C. § 1401(12) ("The term 'core network' means the core network described in section 6202(b)(1).").

[4] *Id.* § 6001(29), 47 U.S.C. § 1401(29) ("The term 'radio access network' means the radio access network described in section 6202(b)(2).").

[5] *Id.* § 6202(b), 47 U.S.C. § 1422(b).

[6] The term "network architecture," which is not specially defined by the Spectrum Act, refers broadly to the overall assembly of a diverse set of component parts, including various core and radio access networks, that function together as an ordered whole. *See* Federic Firmin, 3GPP MCC, The Evolved Packet Core, http://bit.ly/1WCVAg5 (last visited May 6, 2017). Had Congress intended to further

that: the original iteration. That "architecture," though it must meet certain baseline requirements defined in subsections (b)(1) and (b)(2), "shall . . . evolve[] with technological advancement" to meet the Spectrum Act's purpose of providing effective and efficient access.[7] While that architecture must "initially consist[] of" a defined "core network" and "radio access network," Congress's deliberate use of temporally dependent language—"evolves" and "initially consists of"—shows that section 6202(b) sets the floor for these networks, not the ceiling.

The text of the Spectrum Act, moreover, demonstrates that these core and radio access networks can and, when appropriate, should rely on elements from state opt-outs. Turning first to subsection (b)(2), that subsection's express reference to the state opt-out process requires that "a radio access network . . . be developed . . . taking into account the plans developed in the State, local, and tribal planning and implementation grant program under section 6302(a)."[8] The implementation grant program under section 6302(a) specifically provides for states making "requests for proposals for the construction, maintenance, and operation of the radio access network within the State."[9] Thus, there is no dispute that subsection (b)(2)'s radio access network allows for elements to be drawn from state opt-out infrastructure,[10] provided that infrastructure meets the relevant commercial and interoperability standards.[11]

So too with subsection (b)(1). In keeping with subsection (b)(2), the umbrella language of section 6202(b), and the Spectrum Act as a whole, subsection (b)(1) contemplates reliance on multiple core elements, some of which may be supplied by states' opt-out plans. Under subsection (b)(1), the meaning of "core network" turns on certain technical and commercial requirements—*not* on the number (one or multiple) or source (from NPSBN or state opt-outs) of core elements. Indeed, subsection (b)(1) requires that any "core network" "consist[] of national *and* regional data centers, and other elements and functions that *may be distributed geographically*," so long as those data centers and other elements and functions are "based on commercial standards."[12] This language therefore permits not only multiple core elements as a general proposition, but also multiple core elements that may be drawn from both NPSBN ("national") and state-based ("regional") networks.

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limit the term "network architecture" to allow multiple radio access networks but only a single core, Congress would have so specified.

[7] Spectrum Act § 6202(b), 47 U.S.C. § 1422(b) (2015).

[8] *Id*. § 6202(b)(2)(B), 47 U.S.C. § 1422(b)(2)(B).

[9] *Id*. §§ 6302(a), (c)(3)(A), 47 U.S.C. § 1442(a), (c)(3)(A).

[10] *See also id*. § 6302(f) ("If a State *chooses to build its own radio access network*, the State shall pay any user fees associated with State use of *elements* of the core network." (emphases added).

[11] Indeed, the Technical Advisory Board for First Responder Interoperability, which section 6203(c)(3)(A) of the Act directed the Commission to create to advise FirstNet on how to ensure interoperable communications among the NPSBN and state networks, presupposed multiple cores and repeatedly addressed how to ensure interoperability across these elements in its 2012 report to the First Responder Network Authority. *See, e.g.*, Technical Advisory Board for First Responder Interoperability, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network*, Final Report §§ 3.3.1, 4.1.1, 4.1.4.4, 4.1.6.6, 4.1.6.7, 4.1.6.15, 4.1.6.17, Fig. 4 (May 22, 2012), http://bit.ly/2pMHteA, *appended to Recommendations of the Technical Advisory Board for First Responder Interoperability*, Order, 27 FCC Rcd 7733 (2012).

[12] Spectrum Act § 6202(b)(1)(A), 47 U.S.C. § 1422(b)(1)(A) (emphases added).

Instead of being limited by their source, which would preclude the efficiencies to be gained from using preexisting state resources, the Spectrum Act provides that qualifying core elements "provide[ ] the connectivity between (i) the radio access network; and (ii) the public Internet or the public switched network, or both."[13] Under 3GPP standards, several components of an EPC serve functions other than providing the gateway for external Internet or switched connectivity.[14] The Home Subscriber Server (HSS), for example, is a database of subscribers' information that supports call and session setup and user authentication while the Mobility Management Entity (MME) provides the control plane functions that manage mobility and security. These network elements are interconnected through standardized interfaces to allow multi-vendor interoperability and are intended to provide operators with the flexibility to source different network elements from different vendors and to split or merge the physical implementations of these logical network elements depending on the operator's preferred network architecture. To be sure, state-based core connections to the RAN, the Internet, and switched networks must be interoperable with those of the NPSBN, but subsection (b)(1)'s definition of "core network" functions to ensure interoperability through interconnection to the NPSBN, not to restrict the scope of usable core elements to only those deployed by the NPSBN.

As section 6202's text shows, there is no limitation in the Spectrum Act that the "core network" consist solely of NPSBN elements. Therefore the Commission, even were it inclined to fashion such a counterproductive requirement, lacks the authority to mandate one.

ii. Section 6302(e)

Section 6302(e), which governs "State Networks," similarly supports reading the Spectrum Act to allow state opt-out plans with core elements, in keeping with the Act's plain meaning.

Section 6302 conditions the National Telecommunications & Information Administration's (NTIA's) grant of funds and spectrum leasing rights to opting-out states upon making technical showings that are only possible if a state operates its own core elements. For instance, an opting-out state can obtain grant funds and spectrum-capacity leasing rights only if it demonstrates that it has "comparable security, coverage, and quality of service to that of the nationwide public safety broadband network."[15] But that showing would be impossible if a state (or its commercial partner) cannot operate its own EPC. The LTE core network, which includes the Packet Data Network Gateway (PDN-GW) and the Service Gateway (S-GW), as well as the HSS and MME, controls network authentication; monitors quality requirements under changing traffic conditions; addresses registrations, session setups, and handovers; and responds to changing subscriber behavior, varying consumption patterns, and fluctuating traffic patterns. Without access to these core functions, states cannot offer service to anyone—much less service of comparable "security, coverage and quality" to that of FirstNet. Section 6302(e), as FirstNet summarized, "implies that States building and operating a RAN are at least providing a 'quality of service' to someone."[16] But States can neither offer service, nor demonstrate the same level of "security, coverage and quality of service" as FirstNet without relying on a core network.

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[13] *Id.* § 6202(b)(1)(B), 47 U.S.C. § 1422(b)(1)(B).

[14] The Packet Data Network Gateway (PDN-GW) is the primary component of an EPC that interconnects the EPC to external IP networks. *See* Federic Firmin, 3GPP MCC, The Evolved Packet Core, http://bit.ly/1WCVAg5 (last visited May 6, 2017).

[15] Spectrum Act § 6302(e)(3)(D); 47 U.S.C. § 1442(e)(3)(D).

[16] Dept. of Commerce, Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 13336, 13346 (Mar. 13, 2015).

Because it would be rendered a nullity under a contrary reading, section 6302(e) reinforces the conclusion that the Spectrum Act allows state opt-out plans to contain their own core elements.[17]

iii. Sections 6206(b) and (c)

Finally, sections 6206(b) and (c) of the Spectrum Act, part of the "Powers, Duties, and Responsibilities of the First Responder Network Authority," provide additional evidence that Congress intended to allow states opting out to deploy their own core elements.

Congress explicitly directed FirstNet to consult with state and local entities for the purpose of leveraging the infrastructure and other resources those entities can offer—and Congress did not exclude core infrastructure from this mandate. Rather, the Spectrum Act provides FirstNet "shall consult with" state and local entities "regarding the distribution and expenditure of any amounts" required for both "construction of a core network" and "any radio access network build out."[18] In delegating to FirstNet the "duty and responsibility to deploy and operate" the NPSBN, the Act requires FirstNet to:

> take all actions necessary to ensure the building, deployment, and operation of the [NPSBN] in consultation with . . . State . . . and local public safety entities . . . including by, at a minimum . . . encouraging that [RFPs] leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network.[19]

Similarly, in the context of "state and local planning," the Act directs FirstNet to enter into agreements to "utilize, to the maximum extent economically desirable," existing commercial or other communications infrastructure, whether that be "Federal, *State*, tribal, or local infrastructure."[20] Had Congress intended (for whatever reason) to forego the gains from allowing states to use their own core elements, it would have done so by carving out "core infrastructure" from the text of these provisions.

But Congress made no such carve-out for core-network elements. And for good reason. As Southern Linc has explained, allowing state-operated cores will help to achieve both of the Spectrum Act's goals.[21] States that take advantage of existing core infrastructure can reduce costs associated with new core-network builds that FirstNet would otherwise need to pay for, avoiding duplicative

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[17] *See Marx v. Gen. Revenue Corp.*, 133 S. Ct. 1166, 1178 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." (citation omitted)).

[18] Spectrum Act § 6206(c)(2)(A), 47 U.S.C. § 1426(c)(2)(A) (2015).

[19] *Id.* § 6206(b)(1), 47 U.S.C. § 1426(b)(1).

[20] *Id.* § 6206(c)(3), 47 U.S.C. § 1426(c)(3) (emphasis added).

[21] *See* Comments of Southern Linc, PS Docket No. 16-269 at 5-10 (filed Oct. 21, 2016) ("Southern Linc FirstNet NPRM Comments"); *FCC Review of State Opt-Out Requests from the FirstNet Radio Access Network*, attached to *Ex Parte* Letter from Trey Hanbury, Counsel to Southern Linc to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269, attach. at 4 (filed Feb. 7, 2017) ("Southern Linc Ex Parte").

resource deployments.[22] Taking advantage of local, hardened core network infrastructure will also reduce the time needed to make critical broadband capacity available to first responders.

Read together, section 6202(b), section 6302(e), and sections 6206(b) and (c) confirm the commonsense notion that the Spectrum Act permits state opt-outs to use their own core elements when all relevant interoperability requirements have been satisfied and it would be more effective and efficient to do so.

The Spectrum Act Limits the Scope of the Commission's Review of States' Opt-Out Plans and Prevents the Commission from Adopting Onerous, Extra-Statutory Requirements for States to Exercise their Right to Opt-Out

The Act limits the Commission's authority to evaluate state opt-out plans. The Commission's authority to review state opt-out plans is set out in section 6302(e) of the Spectrum Act, which allows the Commission to assess only a state plan's (1) compliance with the FCC Technical Advisory Board's minimum technical interoperability requirements, and (2) interoperability with the NPSBN.[23] The Commission cannot exceed the bounds of the limited authority delegated to it by Congress, such as by adopting onerous, extra-statutory processes for states to exercise their right to opt-out of FirstNet's NPSBN plan.

i. The 180-Day Deadline for an Opting-Out State to "Develop and Complete" an RFP Means the State Must Issue an RFP Within 180 Days (Section 6302(e)(3)(B))

The Commission asked in its *Notice of Proposed Rulemaking* whether a state plan should be deemed incomplete if a state has issued an RFP but has not yet received bids or awarded a contract within the 180-day period set forth in section 6302(e)(3). The text of the Spectrum Act provides the answer to the Commission's question: no.

The Spectrum Act instructs that, not later than 180 days after a state provides notice of its intention to opt-out, the state "shall develop and complete requests for proposals for the construction, maintenance, and operation of the radio access network within the state."[24] The statute provides only that states must "develop and complete requests for proposals." Accordingly, the exact scope of that obligation depends on the meaning of what is to be developed and completed—the "requests for proposal"—which Congress did not specifically define in the Act.[25] And as the term is generally used, a "request for proposal" is "*[a]n invitation* to *prospective* suppliers or contractors *to submit proposals or bids* to provide goods or services" that "requires bidders to give more information than the proposed price."[26] Requiring a state to have received responses to the RFP or to have awarded a contract within 180 days of first providing notice to FirstNet of its intention to opt-out far exceeds the act of extending an invitation to submit proposals or bids.[27] As such, an

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[22] *See* Southern Linc FirstNet NPRM Comments at 9; Southern Linc Ex Parte, attach. at 4.

[23] Spectrum Act § 6302(e)(3)(C)(i), 47 U.S.C. § 1442(e)(3)(C)(i) (2015).

[24] *Id.* § 6302(e)(3)(B); 47 U.S.C. § 1442(e)(3)(B).

[25] *See Bilski v. Kappos*, 561 U.S. 593, 603 (2010) ("[A]s in all statutory construction, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." (alteration, citation, and quotation marks omitted)).

[26] *Request for proposal*, Black's Law Dictionary (10th ed. 2014) (emphasis added).

[27] To see how difficult and time-consuming the contracting process is in this context, one need look no further than FirstNet's experience in selecting AT&T as its network partner for the NPSBN. It took

interpretation requiring opting-out states to do more than extend such an invitation within the correspondingly short deadline is contrary to the plain meaning of "request for proposal,"[28] and therefore contrary to the plain language of the Spectrum Act.

ii. The Spectrum Act Permits a Governor's Designee to Submit an Opt-Out Notice (Section 6302(e)(2), (3)(A))

The Spectrum Act allows parties other than the Governor of a State to submit the state's opt-out notification on behalf of the Governor. Section 6203(e), the Act's provision governing state opt-outs, directs that "[n]ot later than 90 days after the date on which the Governor of a State receives notice" of FirstNet's plan for the state, "the Governor shall choose" whether to participate in the NPSBN or opt-out, and that "the Governor shall notify" FirstNet, NTIA, and the FCC of his or her decision.[29] Interpreting this text and other subsections of 6302(e) as requiring decisions and actions by "the Governor" alone would lead to inconsistent and absurd results.

There is no indication in the Spectrum Act that this 90-day notice requirement is meant to be anything but a run-of-the-mill notice requirement. Indeed, the requirement is brief and how "the Governor shall notify" FirstNet, NTIA, and the FCC is left undefined. Therefore, "notify" should be given its ordinary, broadly flexible meaning: "[t]o inform (a person or group) in writing or by any method that is understood."[30] So long as a reasonable means of giving notice of the Governor's decision is chosen and the Governor has decided to give that notice, there is no basis under section 6203(e) to conclude the Governor and the Governor alone—as opposed to a designated state official—must effect that notice.

To be sure, the relevant part of the Spectrum Act refers, variously and without obvious explanation, to "the Governor,"[31] "the Governor of a State,"[32] and "the Governor of each State, or his

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FirstNet *more than five years* from the February 2012 enactment of the Spectrum Act to announce its selection. *See* First Responder Network Authority, Press Release, FirstNet Partners with AT&T to Build Wireless Broadband Network for America's First Responders (Mar. 30, 2017), *available at* http://bit.ly/2pgUPMV. And this process involved a series of RFIs, the first of which FirstNet released *more than a year* after the enactment of the Spectrum Act. First Responder Network Authority, Request for Information, FirstNet Request for Information (RFI) for Mobile Devices (Apr. 15, 2013), *available at* http://bit.ly/2p7m557. And the latest RFP came *nearly three years* after that date. First Responder Network Authority, Press Release, FirstNet Issues RFP for the Nationwide Public Safety Broadband Network (Jan. 13, 2016), *available at* http://bit.ly/2pRQWj8. Construing the Spectrum Act to require a state to compress this entire process into *180 days*—as opposed to developing and completing the RFPs, as the text provides—would severely undermine these sensitive deliberations, if doing so would be possible at all.

[28] Moreover, other provisions of the Spectrum Act show that Congress knows how to differentiate between RFPs and fully executed agreements when it intends to do so. *Compare* 47 U.S.C. § 1426(b)(1)(B) (directing FirstNet to "issu[e] open, transparent, and competitive requests for proposals to private sector entities"), *with* 47 U.S.C. § 1426(b)(1)(D) (directing FirstNet to "manag[e] and oversee[ ] the implementation and execution of contracts or agreements with non-Federal entities to build, operate, and maintain the network.").

[29] Spectrum Act §§ 6302(e)(2), (e)(3)(A); 47 U.S.C. §§ 1442(e)(2), (e)(3)(A).

[30] *Notify*, Black's Law Dictionary (10th ed. 2014).

[31] Spectrum Act § 6302(e)(3)(A), 47 U.S.C. § 1442(e)(3)(A) (2015).

[32] *Id.* § 6302(e)(2), 47 U.S.C. § 1442(e)(2).

designee,"[33] but this unexplained variation, when read in context, does not compel the absurd result that no one but the Governor can effect service on the Governor's behalf. To adopt that reading would mean, among other absurdities, that the Governor alone would also be responsible for *developing and completing a state's RFP*[34]—a time-consuming, technically sophisticated, and logistically complex task that necessarily involves an array of engineering, business, legal and regulatory knowledge and resources that no one person possesses, much less the executive officer of a sovereign state tasked with untold other responsibilities. Just as limiting the scope of individuals eligible to develop and complete requests for proposals to the singular executive officer of the state would be nonsensical, so too is requiring that singular executive officer to personally carry out the ministerial task of effecting notice.[35]

iii. The Act Requires the FCC to Give Opt-Out States an Opportunity to Cure Defects in their Initial Plans and to Provide a Written Explanation of the Agency's Final Decision on the State's Opt-Out Plan (Section 6302(h)(2))

The Spectrum Act requires the Commission to afford opting-out states appropriate due process during the review process. The Commission must (1) allow states to cure defects in their initial proposals; and (2) provide a written explanation of the agency's disapproval of an opt-out plan.

The Commission's disapproval of a state plan under the Spectrum Act is subject to judicial review and the reviewing court will overturn the Commission's disapproval if, for example, "the Commission was guilty of misconduct in refusing to hear evidence pertinent and material to the decision or of any other misbehavior by which the rights of any party have been prejudiced."[36] Moreover, longstanding principles of administrative law underscore that meaningful judicial review cannot occur without a written decision from the agency specifying the evidence it considered and its reasons for disapproving the state plan.[37] Likewise, longstanding principles of administrative law and due process require that an applicant first receive clear notice before an agency can reject,

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[33] *Id*. § 6302(e)(1), 47 U.S.C. § 1442(e)(1). The interpretive *expressio unius canon generally* provides that expressing one item of an associated group or series excludes another left unmentioned. *See, e.g., Chevron U.S.A. Inc. v. Echazabal,* 536 U.S. 73, 80 (2002) (quoting *United States v. Vonn,* 535 U.S. 55, 65 (2002)). But as with any canon of statutory interpretation, context often trumps these general rules. The Supreme Court has "long held that the *expressio unius* canon does not apply unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it, and that the canon can be overcome by contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion." *See Marx v. Gen. Revenue Corp.*, 133 S. Ct. 1166, 1175 (2013) (citations and quotation marks omitted).

[34] *See* Spectrum Act § 6302(e)(3)(B), 47 U.S.C. § 1442(e)(3)(B) ("Not later than 180 days after the date on which a Governor provides notice [to FirstNet of the opt-out decision], the Governor shall develop and complete [RFPs] for the construction, maintenance, and operation of the radio access network within the State.").

[35] *See Corley v. United States*, 556 U.S. 303, 317 (2009) ("These are some of the absurdities of literalism that show that Congress could not have been writing in a literalistic frame of mind."); *see also Recreational Fishing All., Inc. v. Nat'l Marine Fisheries Serv.*, 2012 WL 868880, at *7 (M.D. Fla. 2012) (rejecting "argument that the Secretary of Commerce must personally sign off on every decision made pursuant to the [relevant statute]" because "laws are not read in a vacuum").

[36] Spectrum Act § 6302(h)(2); 47 U.S.C. § 1442(h)(2).

[37] *See, e.g., T-Mobile, LLC v. City of Roswell, Ga.*, 135 S. Ct. 808, 814 (2015); *Burlington N. & Santa Fe Ry. v. White*, 126 S. Ct. 2405, 2413–14 (2006).

without any possibility to amend, a technically complex, detailed and lengthy application filed in substantial compliance with the governing procedures.[38] Because the Commission is obligated to hear pertinent and material evidence relevant to its decision, because the Commission's decision is subject to judicial review, and because neither the Spectrum Act nor the Commission have provided notice that minor or *de minimis* errors in an initial application will result in the automatic dismissal of a state's opt-out submission, the Commission must allow opting-out states to supplement or otherwise cure any defects in their initial proposals and issue written explanations with reasoning sufficient to enable review.

In line with its purpose of promoting efficient and effective access to public-safety networks, the Spectrum Act allows states to take advantage of their own core elements when all relevant interoperability requirements have been satisfied and when doing so would be appropriate. Commission adherence to the text of the Spectrum Act will enable FirstNet to take advantage of existing core elements, such as Southern Linc's highly resilient facilities, and allow states to create the public safety networks that best meet their unique needs. The Commission can better promote the deployment of the NPSBN by recognizing its limited role in reviewing state opt-out proposals, avoiding extra-statutory qualifications or restrictions on states seeking to opt-out of FirstNet's plan, and following the language of the Spectrum Act.

Please contact me with any questions about this submission.

Respectfully submitted,

/s/ Trey Hanbury

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[38] *See, e.g.*, *Biltmore Forest Broad. FM, Inc. v. FCC*, 321 F.3d 155, 160 (D.C. Cir. 2003) (holding that lack of notice to the applicant "would deprive it of fair warning that its application might be disqualified without an opportunity to correct it"); *Salzer v. FCC*, 778 F.2d 869, 871–72 (D.C. Cir. 1985) ("[F]undamental fairness also requires that an exacting application standard, enforced by the severe sanction of dismissal without consideration on the merits, be accompanied by full and explicit notice of all prerequisites for such consideration.").